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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220172
Party	Defendant Marshawn Lynch
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Submission	Answer
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Date	12/15/2015
Attachments	Beast Mode Opposition.pdf(427885 bytes)

**IN THE UNITED STATES PATENT AND TRADEMANT OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of: Application Serial No. 86/975,385
For the mark BEAST MODE
Published in the *Official Gazette* on September 16, 2014

MONSTER ENERGY COMPANY)	
)	
Opposer,)	
)	
v.)	Opposition No. 91220172
)	
MARSHAWN LYNCH)	
)	
Applicant.)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Applicant, Marshawn Lynch (“Applicant” or “Mr. Lynch”) hereby replies to the numbered grounds for opposition set forth in the Notice of Opposition filed by MONSTER ENERGY COMPANY against the application for registration of Mr. Lynch’s trademark BEAST MODE, Serial No. 86975385 filed on February 27, 2014 and published in the Official Gazette of September 16, 2014 as follows:

1. Applicant admits that it seeks to register a mark as fully displayed in U.S Serial No 86975385, as used in connection with non-alcoholic beverages, namely energy drinks, sport drinks and coconut water in International Cl. 32 and candy in International Cl. 30.
2. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies those allegations.
3. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies those allegations.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies those allegations.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies those allegations.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and therefore denies those allegations.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies the allegations.

8. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies the allegations.

9. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies those allegations.

10. Applicant lacks knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 10 and therefore denies those allegations.

11. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies those allegations.

12. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies those allegations.

13. Applicant makes no answer to the allegations set forth in Paragraph 13 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies those allegations.

14. Applicant makes no answer to the allegations set forth in Paragraph 14 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and therefore denies those allegations.

15. Applicant makes no answer to the allegations set forth in Paragraph 15 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies those allegations.

16. Applicant makes no answer to the allegations set forth in Paragraph 16 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies the allegations.

17. Applicant makes no answer to the allegations set forth in Paragraph 17 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies those allegations.

18. Applicant makes no answer to the allegations set forth in Paragraph 18 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies those allegations.

19. Applicant admits that Application Serial No. 86975385 was filed on February 27, 2014 on an intent-to-use basis. Further, Applicant lacks knowledge or information sufficient to

form a belief as to the truth of the remaining allegations set forth in Paragraph 19 therefore denies those allegations.

20. Applicant admits that it is seeking federal registration for the mark BEAST MODE in International Classes 30 and 32 as set forth in application Serial No. 86975385. Applicant makes no answer to the allegations set forth in Paragraph 20 to the extent those allegations state legal conclusions rather than facts. Further, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 20 and therefore denies those allegations.

21. Applicant denies the allegations in Paragraph 21, including, without limitation, the allegation that Opposer will be damaged by the registration of application Serial No. 86975385.

22. Applicant denies the allegations in Paragraph 22, including, without limitation, that Opposer is entitled to any relief requested in the Notice of Opposition.

23. Applicant further affirmatively alleges that as a result of Applicant's continuous substantial use of its family of BEAST MODE marks ("Marks"), including Registration Serial Nos. 3650781, 4254213, 4640627 and 4582964, which are attached hereto as Exhibits A-D and hereby incorporated by reference, the Marks carry considerable goodwill and consumer acceptance of the products sold under the Marks which goodwill extends to Application Serial No. 86975385 and the goods which Applicant has begun to market in connection therewith.

24. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark and the pleaded marks of Opposer are not confusingly similar.

25. Applicant further affirmatively alleges that there is no likelihood of confusion, mistake or deception because, *inter alia*, any similarity, if at all, between Applicant's mark and

the pleaded marks of Opposer would be solely because each of the pleaded marks and Applicant's mark incorporates the word "Beast". Upon information and belief, marks which consist of or incorporate the word "Beast" have been used and/or registered by numerous third parties in connection with non-alcoholic beverages and food. As a result, Opposer's pleaded marks are weak and diluted, and are therefore, of insufficient strength to sustain an allegation of confusing similarity between Opposer's pleaded marks and Applicant's mark. Any trademark rights that Opposer may have in the pleaded marks are narrowly circumscribed.

26. Applicant further affirmatively alleges that there is no likelihood of dilution of Opposer's mark by tarnishment because Opposer's pleaded marks are already weak and diluted as a result of substantial third party use and/or registration of similar marks.

27. Applicant further affirmatively alleges that there is no likelihood of dilution by blurring because Opposer's and Applicant's marks are not sufficiently similar, particularly, given the numerous third party common law uses and/or registrations of marks that consist of or incorporate the word "Beast". Further, Applicant did not intend any association with Opposer's pleaded marks; and upon information and belief, ordinary prospective purchasers of Applicant's products have not and will not associate Applicant's mark with Opposer's pleaded marks.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and grant all other appropriate relief to Applicant as it deems just.

Respectfully submitted,

Marshawn Lynch

By: 

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ATTORNEYS FOR APPLICANT
MARSHAWN LYNCH

Date: December 15, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Answer to Notice of Opposition has been served on opposing counsel by mailing said copy on December 15, 2015, via Federal Express and First Class Mail, postage prepaid to:

Steven Nataupsky
Diane M. Reed
Jonathan A. Menkes
2040 Main Street, 14th Floor
Irvine, CA 92614


ASHLEY ROBIN BROWN

EXHIBIT A:

Registration Certificate for BEAST MODE,
Reg. No. 3,650,781, Registered July 7, 2009

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,650,781

Registered July 7, 2009

**TRADEMARK
PRINCIPAL REGISTER**

BEAST MODE

MARSHAWN LYNCH (UNITED STATES INDIVIDUAL)
2121 N. CALIFORNIA BLVD., SUITE 1025
WALNUT CREEK, CA 94596

FOR: T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 10-30-2008; IN COMMERCE 10-30-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-637,215, FILED 12-19-2008.

WARREN L. OLANDRIA, EXAMINING ATTORNEY

EXHIBIT B:

Registration Certificate for BEAST MODE,
Reg. No. 4,254,213, Registered Dec. 4, 2012

United States of America

United States Patent and Trademark Office

BEAST MODE

Reg. No. 4,254,213

Registered Dec. 4, 2012

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

LYNCH, MARSHAWN (UNITED STATES INDIVIDUAL)
832 SANSOME STREET
1ST FLOOR
SAN FRANCISCO, CA 94111

FOR: MEN'S, WOMEN'S AND CHILDREN'S CLOTHING, NAMELY, SHIRTS, SWEATSHIRTS;
HEADWEAR, NAMELY, HATS, CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-3-2011; IN COMMERCE 7-3-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-637,222, FILED 12-19-2008.

WARREN L. OLANDRIA, EXAMINING ATTORNEY



David J. Kybas

Director of the United States Patent and Trademark Office

EXHIBIT C:

Registration Certificate for BEAST MODE,
Reg. No. 4,640,627, Registered Nov. 4, 2014

United States of America

United States Patent and Trademark Office

BEAST MODE

Reg. No. 4,630,627

Registered Nov. 4, 2014

Int. Cl.: 14

TRADEMARK

PRINCIPAL REGISTER

MARSHAWN LYNCH (UNITED STATES INDIVIDUAL)
832 SANSOME STREET, 1ST FLOOR
SAN FRANCISCO, CA 94111

FOR: WATCHES, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 1-9-2013; IN COMMERCE 1-9-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,650,781 AND 4,254,213.

SER. NO. 85-777,409, FILED 11-12-2012.

JOHN GARTNER, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

EXHIBIT D:

Registration Certificate for BEAST MODE,
Reg. No. 4,582,964, Registered Aug. 12, 2014

United States of America

United States Patent and Trademark Office

BEAST MODE

Reg. No. 4,582,964

Registered Aug. 12, 2014

Int. Cl.: 9

TRADEMARK

PRINCIPAL REGISTER

MARSHAWN LYNCH (UNITED STATES INDIVIDUAL)
832 SANSOME STREET, 1ST FLOOR
SAN FRANCISCO, CA 94111

FOR: SUNGLASSES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 10-18-2012; IN COMMERCE 10-18-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,650,781 AND 4,254,213.

SER. NO. 85-981,795, FILED 11-12-2012.

JOHN GARTNER, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office